

The complaint

Ms L complains that AWP P&C SA has turned down a personal possessions claim she made on a travel insurance policy.

What happened

Ms L held an annual travel insurance policy which was underwritten by AWP.

In August 2020, Ms L was abroad in a country I'll call F. She was travelling by train along with her husband, who she says was seated next to her. She had a laptop with her. As there was no overhead storage compartment and the luggage rack was at the other end of the carriage, she put the laptop in a bag and placed it under her seat. Ms L says the bag was between her legs. She fell asleep during the journey and later found that the bag had been stolen. So she made a claim on her travel insurance policy for the laptop.

AWP ultimately turned down the claim because it said Ms L hadn't taken reasonable care of her laptop. So it said the claim was specifically excluded by the policy terms.

Ms L was unhappy with AWP's decision and she asked us to look into her complaint.

Our investigator thought Ms L's complaint should be upheld. He didn't think Ms L had acted unreasonably in the circumstances and he also didn't think Ms L had left the items unattended. So he recommended that AWP should pay the claim, together with interest.

AWP disagreed and so the complaint's been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think it was fair for AWP to turn down Ms L's claim and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Ms L's policy and the circumstances of her claim, to decide whether AWP treated her fairly.

I've first considered the policy terms and conditions, as these form the basis of Ms L's contract with AWP. Section 3 of the policy is called 'Personal Possessions' and says:

'What you are covered for

- 1. We will pay up to the amount shown in the summary of cover for the value or cost of repair of any of your own personal possessions (not hired, loaned or entrusted to you) which are lost, stolen, damaged or destroyed during your trip (after making allowance for wear and tear and depreciation).'*

It's clear AWP does provide cover for a policyholder's stolen personal possessions. And having checked AWP's definition of 'personal possessions', I'm satisfied Ms L's laptop falls within the scope of personal possessions cover. Ms L has provided a police report which provides details of the laptop's loss. So I think Ms L has shown her loss was caused by a listed, 'insured event' the policy covers.

The personal possessions section of the policy also sets out a list of events AWP specifically excludes from cover. I've set out two of these exclusions which AWP considers apply to the circumstances of the claim.

'What you are not covered for

- 2. you not exercising reasonable care for the safety and supervision of your personal possessions;*
- 3. loss, destruction, damage or theft of any items left unattended in a public place, or a place to which members of the general public have access.'*

It's for AWP to demonstrate, on balance, that an exclusion applies to the circumstances of a claim which means that the claim shouldn't be paid. So I've carefully considered all of the evidence to decide whether I think AWP has shown it's fairly relied on an exclusion to decline Ms L's claim.

In order for AWP to fairly conclude that Ms L failed to take reasonable care of her laptop and bag, it would need to show that she was aware of a risk and had courted it – in other words, that she acted recklessly.

I've looked closely at all of the evidence. Ms L has provided a clear and consistent recollection of events, which correlates with the information she gave AWP on its claim form. Briefly, she says that there were no overhead storage compartments and that the luggage rack was at the other end of the carriage and couldn't be seen. On that basis, she decided to store the laptop and bag under her seat, between her legs. The police report also says that the laptop was in a bag under the seat on a train. In my view, the evidence Ms L has provided is plausible and persuasive. And I also think that by placing the bag under the seat and between her legs, Ms L took reasonable steps to try and protect her items and to keep them out of sight. It seems to me that rather than acting recklessly, Ms L tried to mitigate the chance of a loss or theft occurring.

As such then, I don't think AWP has shown, on balance, that Ms L failed to exercise reasonable care of her personal possessions. And so I don't think it's fair for AWP to rely on this exclusion to turn down the claim.

I've next turned to consider whether Ms L left her items unattended. AWP has defined what it means by unattended. The policy says:

'Unattended: When you cannot see and are not close enough to your property to prevent unauthorised interference or theft of your property unless left in a safety-deposit facility.'

It seems to me that Ms L's items were kept as close to her as possible, given the circumstances. She was close to her bag during the journey, as was her husband. While I accept she couldn't see the bag while she was asleep, I don't think I could fairly say that the policy requires a policyholder to look directly at their items at all times. And it's fairly common for people travelling by rail to fall asleep during a journey, even if briefly. In Ms L's case, she says she was in the early stages of pregnancy. In my view, even if Ms L was asleep, I don't think this negates the fact that the bag was kept in close proximity to her during the journey.

I'd add too that there's no evidence to suggest when the bag was taken – it could've happened while Ms L was awake or asleep.

On this basis then, I don't think AWP has shown it's entitled to rely on this exclusion clause either to turn down Ms L's claim. I don't think it's treated Ms L fairly and I don't think it acted reasonably when it turned down her claim.

Overall, I'm satisfied Ms L has shown she has a valid claim on her policy and has provided proof of both purchase and the loss. So I find that AWP must now settle the claim in line with the applicable policy limits.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct AWP P&C SA to settle Ms L's personal possessions claim, in line with the remaining policy terms and conditions and any applicable limits. AWP must add interest to the settlement at an annual rate of 8% simple from the date of claim until the date of settlement.

If AWP considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms L how much it's taken off. It should also give Ms L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 27 June 2022.

Lisa Barham
Ombudsman